

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of )
Request for Review of the )
Decision of the )
Universal Service Administrator by )
Prospect Sierra School ) File No. SLD-327500
El Cerrito, California )
Schools and Libraries Universal Service ) CC Docket No. 02-6
Support Mechanism )

ORDER

Adopted: October 31, 2003 Released: November 3, 2003

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by Prospect Sierra School (Prospect Sierra), El Cerrito, California. Prospect Sierra requests review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator). For the reasons set forth below, we deny Prospect Sierra's Request for Review.

2. In its decision, SLD stated that Prospect Sierra signed and submitted its Funding Year 2002 FCC Form 471 prior to the expiration of the 28-day waiting period, in violation of program rules. Prospect Sierra states that it filed its FCC Forms 470 and 471 simultaneously because it had been instructed to do so by an SLD representative when it called SLD seeking

1 Letter from Dena Watson-Lamprey, Prospect Sierra School, to Federal Communications Commission, filed July 2, 2002 (Request for Review).

2 Id.

3 See Letter from the Schools and Libraries Division, Universal Service Administrative Company, to Dana Watson-Lamprey, Prospect Sierra School, dated June 24, 2002 (Administrator's Decision on Appeal). In accordance with the Commission's rules, an applicant must file with SLD, for posting to its website, an FCC Form 470 requesting services. See 47 C.F.R. § 54.504(b); Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (November 2001) (FCC Form 470). The applicant must wait 28 days before entering into an agreement with a service provider for the requested services and submitting an FCC Form 471 requesting support for the services ordered by the applicant. 47 C.F.R. § 54.504(c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2001) (FCC Form 471). The purpose of the 28-day waiting period is to ensure that prospective service providers have sufficient time to prepare and submit competitive bids for the services requested in the FCC Form 470.

advice on how to file a late FCC Form 470.<sup>4</sup> Prospect Sierra argues that SLD should be reversed because it received incorrect advice from SLD.<sup>5</sup> Consistent with our precedent in the *St. Marys* and *Currituck Orders*, we conclude that SLD's decision is supported by precedent and the underlying record.<sup>6</sup>

3. Further, construing Prospect Sierra's argument as a request for a waiver of the 28-day posting rule, we find that a waiver is not appropriate. A waiver from the Commission is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.<sup>7</sup> Prospect Sierra has not presented any arguments or unique circumstances that would warrant granting a waiver of this rule.<sup>8</sup> Therefore, we affirm SLD and deny the Request for Review.

---

<sup>4</sup> Request for Review.

<sup>5</sup> *Id.*

<sup>6</sup> *Request for Review by St. Marys Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of National Exchange Carrier Association*, File No. NEC.471.12-07-99.02000002, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 12936 (Com. Car. Bur. 2001) (*St. Marys Order*)(denying a waiver request where the applicant had incorrectly filed its FCC Forms 470 and 471 simultaneously); *Request for Review of the Decision of the Universal Service Administrator by Currituck County Schools, Federal-State Joint Board On Universal Service Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 5564 (Com. Car. Bur. 2000) (*Currituck Order*). See also *In re Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705, 4707-08, para. 22 (1991) (citing *Office of Personnel Management v. Richmond*, 497 U.S. 1046 (1990) (where a party has received erroneous advice, the government is not estopped from enforcing its rules in a manner that is inconsistent with the advice provided by the employee, particularly when relief is contrary to a rule)).

<sup>7</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (stating that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis), *cert. denied*, 409 U.S. 1027 (1972).

<sup>8</sup> See *Request for Review By Bancroft Rosalie Community Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-130114, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 20406 (Com. Car. Bur. 2000). See also *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Order on Reconsideration, 12 FCC Rcd 10095, 10098, para. 9 (1997).

4. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Review filed by Prospect Sierra School, El Cerrito, California, on July 2, 2002, IS DENIED.

## FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert  
Deputy Chief, Telecommunications Access Policy Division  
Wireline Competition Bureau